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March 31, 1997

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**BY HAND DELIVERY**

Mr. William F. Caton  
Acting Secretary  
Room 222  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: **MM Docket No. 95-176**  
**Closed Captioning and Video Description**

Dear Mr. Caton:

Transmitted herewith on behalf of Grupo Televisa, S.A. are an original and eleven copies of its Reply Comments in response to comments on the Commission's Notice of Proposed Rulemaking in MM Docket No. 95-176 (FCC 97-4, released January 17, 1997).

Also enclosed are two copies marked "Extra Public Copy," pursuant to the Commission's March 22, 1996 Public Notice regarding proceedings implementing the Telecommunications Act of 1996.

Respectfully submitted,

*Barbara K. Gardner*

Barbara K. Gardner

Enclosures

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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

In the Matter of )  
 )  
Closed Captioning and Video Description )  
of Video Programming )  
 )  
Implementation of Section 305 of the )  
Telecommunications Act of 1996 )  
 )  
Video Programming Accessibility )

MM Docket No. 95-176

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**REPLY COMMENTS OF GRUPO TELEVISA, S.A.**

Grupo Televisa, S.A. ("Televisa") hereby replies to comments filed in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding (FCC 97-4 released January 17, 1997). Like Televisa, many commenters support an exemption from the captioning requirements for foreign language programming.

**I. An Exemption Is Entirely Justified For All Foreign Language Programming Produced In A Non-English Speaking Country.**

Televisa argued in its initial comments that the Commission should exempt from its captioning rules video programming that is produced outside the United States in a non-English speaking country ("non-U.S. foreign language programming"). Many commenters, including both broadcasters and captioners, agree, or urge an even broader foreign language programming

exemption. See, e.g., Comments of CBS, Inc. ("CBS Comments") at 15 (mandatory captioning of foreign language programming would cause "economic hardship"); Comments of Telemundo Group, Inc. ("Telemundo Comments") at 8 (Commission should exempt "any programming acquired from a programming source in a foreign country"); Comments of Captivision ("Captivision Comments") at 6 (foreign language programming is not cost-effective to caption and therefore should be exempt); Comments of KSLS, Inc. ("KSLS Comments") at 1 (the Commission should adopt a "blanket exemption" for all foreign language programming).<sup>1</sup>

Even assuming the Commission could exercise jurisdiction over owners and producers of non-U.S. foreign language programming, a premise with which Televisa and others disagree,<sup>2</sup> foreign program owners and producers lack the experience, equipment, personnel and economic incentive necessary to caption their programming, because they are not subject to any captioning requirements in their home countries.<sup>3</sup> If such programmers were required to caption the programming they distributed in the United States, the high costs of doing so would be passed on to U.S. distributors alone. Thus, domestic distributors of non-U.S. foreign language

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<sup>1</sup> See also Joint Public Television Comments at 22; Comments of Univision Communications Inc. ("Univision Comments") at 5; Comments of the Community Broadcasters Association ("CBA Comments") at 4-5; Comments of Paxson Communications Corporation ("Paxson Comments") at 9; Comments of International Cable Channels Partnership, Ltd. ("ICCP Comments") at 9.

<sup>2</sup> See Univision Comments at 3.

<sup>3</sup> Televisa Comments at 4. See also Joint Public Television Comments at 22; Comments of the A&E Television Networks, The History Channel and Ovation at 12; Univision Comments at 2; Telemundo Comments at 5.

programming would have no choice but to discontinue programs for which the added cost of captions makes carriage uneconomical, thereby reducing program diversity in this country.<sup>4</sup>

As several commenters explain, diversity of programming would suffer to an equal or greater degree if foreign program owners or producers declined to provide captions, and U.S. distributors of such programming were forced to caption that programming themselves.<sup>5</sup>

Captioning foreign language programming is very labor-intensive,<sup>6</sup> and there are few qualified foreign language captioners in the United States.<sup>7</sup> This scarcity of qualified captioners translates into higher captioning costs for foreign language programming than for English-language programming,<sup>8</sup> a point the Commission itself has recognized.<sup>9</sup> However, domestic distributors of foreign language programming frequently lack the financial resources to pay for these costly

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<sup>4</sup> Televisa Comments at 7. Televisa also noted the strong possibility that owners and producers of foreign language programming might discontinue production of programming for which the economic return is outweighed by the cost of production with captions. *Id.*

<sup>5</sup> Univision and KSLS, Inc. correctly point out that the United States represents a relatively small, secondary market for foreign language programming produced abroad, and that U.S. distributors of such programming may lack the necessary leverage to demand captioning as a condition of carriage. Univision Comments at 2; KSLS Comments at 3.

<sup>6</sup> Captivision Comments at 6. Indeed, Captivision has found captioning of Spanish-language programming to be so labor-intensive as not to be cost effective. For this reason, Captivision suggests that the Commission exempt foreign language programming from the captioning rules. *Id.*

<sup>7</sup> CBS Comments at 15; CBA Comments at 5; ICCP Comments at 6.

<sup>8</sup> CBS Comments at 15; ICCP Comments at 6.

<sup>9</sup> Video Programming Accessibility, Report, MM Docket No. 95-176 (FCC 96-318 released July 29, 1996) at ¶ 80.

captions:<sup>10</sup> foreign language programming in the United States targets a significantly smaller market over which to spread the costs of captioning than comparable English-language programming.<sup>11</sup> These cost and financial considerations are particularly relevant to program providers like Univision, which distributes nearly twice as much video programming as ABC, CBS or NBC.<sup>12</sup>

In light of their inability to bear the substantial costs associated with captioning, domestic distributors likely would have no choice but to eliminate marginally profitable foreign language programs from their programming schedules, to the ultimate detriment of the minority groups for which such programs are intended.<sup>13</sup> It is therefore clear that if the Commission includes non-U.S. foreign language programming within the scope of its captioning rules, program diversity in the United States will decline, regardless of whether the underlying captions are supplied by the owners or producers of foreign language programming, or the U.S. distributors of that programming.

Rather than mandate the captioning of non-U.S. foreign language programming, the Commission instead should permit market forces to determine when and to what degree such programming should be captioned.<sup>14</sup> At such time that demand is sufficient to make captioning

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<sup>10</sup> Comments of Alphastar Television Network Inc. ("Alphastar Comments") at 10-11; Paxson Comments at 9.

<sup>11</sup> ICCP Comments at 6; Telemundo Comments at 6; CBS Comments at 15.

<sup>12</sup> Univision Comments at 3.

<sup>13</sup> Paxson Comments at 9; KSLS Comments at 3; Joint Public Television Comments at 22; Univision Comments at 2; Alphastar Comments at 11.

<sup>14</sup> CBS Comments at 15; Alphastar Comments at 12.

economically feasible, domestic distributors of non-U.S. foreign language programming will supply their video product in captioned form.<sup>15</sup> In the meantime, because any Commission-imposed captioning requirement would distort the foreign language programming market, and thereby reduce the diversity of programming available to the American public, Televisa opposes any requirement to caption non-U.S. foreign language programming, regardless of the timetable adopted.<sup>16</sup>

**II. There Is No Basis For Requiring The Captioning Of Foreign-Language Programming To Help Teach Foreign Languages To English-Speakers: Congress Enacted The Closed Captioning Provisions Of The Telecommunications Act Of 1996 To Benefit Persons With Hearing Disabilities Only.**

Certain representatives of the hearing-impaired community base their opposition to a captioning exemption for foreign language programming in large part on the argument that captioning such programming would benefit English-speaking persons wishing to learn a foreign language.<sup>17</sup> Although captioned programming may indeed provide this and other ancillary benefits, Congress enacted the closed captioning provisions of the Telecommunications Act of 1996 solely to ensure that persons with hearing disabilities have access to video programming.<sup>18</sup> Therefore, in deciding whether to grant an exemption for non-U.S. foreign language

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<sup>15</sup> Alphastar Comments at 12.

<sup>16</sup> Thus, Televisa opposes Univision's suggested five-year delay in imposing a captioning requirement on Spanish-language programming, Univision Comments at 4, while strongly supporting Univision's alternative suggestion that all foreign-language programming produced outside of the United States should be categorically exempt from captioning requirements. *Id.* at 5.

<sup>17</sup> See, e.g., Comments of SHHH Nova West at 5.

<sup>18</sup> See H.R. Report No. 204, 104th Cong., 1st Sess. 113-14 (1995).


programming, the FCC may take into consideration only the potential benefits that captioning would provide to the hearing disabled community. And as Televisa has demonstrated herein and in its initial comments, the adverse consequences of requiring the captioning of non-U.S. foreign language programming clearly outweigh any potential benefits to be derived therefrom.

### **III. Conclusion**

A requirement to caption non-U.S. foreign language programming would inevitably reduce the diversity of programming available to non-English speakers in this country. Because the limited benefits that captioning would provide to the hearing disabled community are inadequate to justify the substantial costs that captioning would impose, an exemption for non-U.S. foreign language programming is entirely justified.

Respectfully submitted,

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